

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: MULTIPLAN HEALTH
INSURANCE PROVIDER LITIGATION

This Document Relates To:

ALL DIRECT ACTIONS

Case No. 1:24-cv-6795
MDL No. 3121

Hon. Matthew F. Kennelly

**MOTION TO ENTER DEFENDANTS' PROPOSED FORMATTED DISCOVERY
FORM AND MEMORANDUM IN SUPPORT**

Pursuant to the parties' agreement in their jointly submitted proposed Discovery and Case Management Scheduling Order on July 8, 2025, Defendants hereby move this Court to adopt the attached Formatted Discovery Form (attached as Exhibit A). The parties met and conferred on the appropriate method to identify and differentiate the individual healthcare providers to determine an approach to evaluate bellwether candidates but were unable to reach a complete agreement.

**MEMORANDUM IN SUPPORT OF MOTION TO ENTER DEFENDANTS’
PROPOSED FORMATTED DISCOVERY FORM**

Defendants seek limited but important information necessary for the evaluation of DAP bellwether candidates: (1) services provided; (2) financial information; (3) DAPs’ OON pricing; (4) balance billing; (5) network participation; and (6) claims data. Defendants’ proposed Formatted Discovery Form (the “Discovery Form”) is narrowly tailored, focuses on limited time periods, and reflects numerous compromises intended to limit the burden on DAPs while allowing Defendants to identify the right DAP bellwether cases for full discovery.

DAPs’ proposed “Fact Sheet,” by contrast, seeks to avoid providing most of this information, offering instead facts alleged in the DAPs’ Short-Form Complaints (such as nearly half a page on claims/relief). It requires the production of only a handful of documents—largely from the current year, long after the complaints were filed—and is completely silent on key issues like balance billing, which Plaintiffs have repeatedly tried to shield from discovery, lest Defendants test the veracity of assertions made to avoid dismissal. Perhaps most nonsensically, DAPs ask the Court to order *Defendants* to produce *Defendants’* claims data about Plaintiffs—which would be both incomplete (not involving all Payors DAPs interact with), time consuming, and remarkably inefficient, rather than to simply have DAPs produce their own readily available information.

DAPs’ proposal does not reflect the “reasonably robust structured discovery” that the Court noted DAP plaintiffs should provide to Defendants, in order to appropriately determine which DAP plaintiffs should proceed to full discovery. June 17, 2025 Hr’g Tr. at 29:6-19.

* * *

For bellwether trials to fulfill their purpose, the selected providers and their claims should consist of a meaningful cross-section of the myriad types of providers and practice sizes that constitute the collective group. *See* Manual for Complex Litigation § 22.315 (Fed. Jud. Ctr. 2004). Choosing appropriate providers for bellwether discovery must therefore reflect “the extent to

which the [potential bellwether providers] differ from one another with respect to characteristics relevant to this litigation.” *Adams v. Deva Concepts, LLC*, 2023 WL 6518771, at *3 (S.D.N.Y. Oct. 4, 2023). In order to determine whether a provider is an appropriate bellwether candidate, the parties and the Court must have sufficient information to identify the pertinent characteristics.

The DAPs’ complaint is based on alleged underpayment of out-of-network claims brought by hundreds of providers of healthcare services against twenty separate defendants. Each provider is different: they operate across different states (or in multiple states), offer different treatments and services, treat vastly different numbers of patients, and likely have substantially different balance billing practices. These differences are manifest, extensive, and necessitate the need for the parties and the Court to gain a better understanding of the universe of providers. Defendants’ Discovery Form seeks limited information on matters that correspond with some of the foreseeable issues in the case, such as the type of services at issue, the severity of alleged injury, the relevant product and geographic markets, and the volume of claims at issue. While the parties have reached compromise/agreement on several issues, there remain critical unresolved topics, addressed below.

Type of Services Provided (Questions G(3) and M). The types of providers asserting DAP claims in this case is incredibly broad—ranging from emergency care to dental practitioners to mental health services. Accordingly, the Discovery Form asks each provider to identify its most frequently billed medical procedure codes—this will allow the parties to ensure that there is variability in the DAPs selected for bellwether treatment. For example, the DAPs’ complaint alleges differences between how providers treat out-of-network emergency care as compared to non-emergency care. *See* Dkt. 171 at ¶ 101 (noting that in-network and out-of-network pricing varies “based on whether the healthcare services were emergency healthcare services provided in a hospital emergency room or non-emergency services”). The burden associated with collecting this information is minimal, particularly given that it is only requested for the last two years; the

types and frequency of services provided should be readily available and Defendants are not seeking the production of documents with respect to this topic.

Financial Information (Document Request No. 3 and Revenue Collected). The Discovery Form requests that each provider produce financial statements and identify revenue collected from out-of-network services over a two-year period. The burden on providers to collect this information is minimal; identifying the amount of revenue collected by each provider for out-of-network services rendered will ensure that providers that generate large profits or suffer larger losses are both selected as bellwethers. Moreover, the revenue collected that is attributable to out-of-network services is directly relevant when the DAPs' theory of injury is based on the alleged underpayment of out-of-network services.

Charges for Out-of-Network Goods and Services (Interrogatory No. 3). The Discovery Form requests each provider identify their chargemasters and the methodology used to set the providers billed charges. A chargemaster is a general document that many healthcare providers use to track the prices of the goods and services that they provide and understanding the methodology is necessary to further differentiate the providers. *See* Dkt. 171 at ¶ 103 (noting the high fixed costs associated with operating a medical practice which will presumably vary depending upon the type of practice). The DAPs' complaint is based on allegations that MultiPlan's pricing methodology results in payment below the charges billed by the individual providers. *See, e.g.,* Dkt. 171 at ¶ 113 (comparing billed charges by DAP Adventist Health System Sunbelt Healthcare Corporation and payments generated using MultiPlan's pricing methodology). Defendants include this topic in the Discovery Form because, in selecting bellwethers, they should be able to understand DAP approaches to setting billed charges in this case where DAPs presumably will attempt to defend the propriety of such charges.

Balance Bills and Collection Attempts (Interrogatories No. 2 and 3). The DAPs' Fact

Sheet fails to include requests necessary to address the allegations in the DAPs' complaint related to the treatment of patients that receive out-of-network services that are subsequently underpaid. For example, the DAPs contend that Defendants "took steps to prevent providers from balance billing" and that "in theory, healthcare providers can refuse to provide services to out-of-network patients for non-emergency care." Dkt. 171 at ¶¶ 522, 720. In denying Defendants' motion to dismiss and finding sufficient allegations of direct injury, the Court relied on DAPs' allegation that they could not balance bill, Dkt. 428 at 10-11. As a result, it is critical to understand prior to bellwether selection whether and to what extent the DAPs are engaging in balance billing practices, which bear on key issues such as antitrust standing. *See* Dkt. 428 at 8-11. DAPs' fact sheet attempts to improperly force selection of bellwethers without any visibility into DAPs' policies and activity with respect to balance billing.

Network Participation (Question No. 4). Another important issue in determining an appropriate cross-section of providers is whether the provider primarily treats patients on an out-of-network basis or only provides out-of-network treatment on an infrequent basis. Identifying how much a treatment or service is actually worth can be gleaned by what the provider negotiates and accepts for that service at an in-network rate. By way of example, providers that primarily treat patients on an in-network basis may accept different rates than providers that primarily treat patients on an out-of-network basis. The two named plaintiffs in the Class Action Complaint are an example of this dynamic. *Compare* Dkt. 172 at ¶ 20 and ¶ 201 (noting that Advanced Orthopedic "only treats patients on an out-of-network basis" and that "[w]hile Panoramic Medicine participates in several insurance networks, it sometimes treats patients on an out-of-network basis"). Requiring the individual providers to list the networks they participate in will allow Defendants to test that variability and identify DAPs as bellwether from both categories.

Claims Data (Question N). Lastly, the Discovery Form seeks confirmation that the

individual DAP maintains the type of data sufficient to ensure that the parties will be able to match relevant claims data in discovery. Defendants believe DAPs are required to provide structured data sample by July 24, per previous Court orders—but DAPs take a different view. At a minimum, if DAPs refuse to produce these samples, they should produce information about their systems.

* * *

In short, the Discovery Form is narrowly tailored, not overly costly or burdensome on the individual DAPs, should not result in a protracted discovery process, and should limit the discovery burden overall moving forward.

The DAPs’ proposed Fact Sheet, by contrast, fails to provide information necessary for this process. *First*, it fails to provide key information necessary to assess the various issues relevant for any potential bellwether, simply ignoring critical issues such as balance billing. *Second*, it drastically limits the set of documents DAPs are to produce: DAPs will not even agree to produce their financial statements, which each DAP can produce with no burden, and proposes limiting the production of their chagemasters to only 2025. It makes no sense to limit such productions only to current forms particularly given that any such forms may have only been adopted after the litigation began. *Third*, it seeks to require each of the nearly twenty Defendants to produce claims data responsive to each individual Formatted Discovery Form (which will likely be upwards of three hundred different DAPs). This request seeks to absolve the DAPs of any burden in efficiently producing their own claims data, instead converting it into an inefficient and highly burdensome production demand on *Defendants*. That makes no sense—this is data Plaintiffs already should readily have themselves, their own claims data—and is the opposite of what the Court directed. June 17, 2025 Hr’g Tr. at 29:6-19 (directing the parties to negotiate a “reasonably robust structured discovery” form with respect to “what the direct action people are going to have to provide”).

Defendants respectfully request that the Court adopt their Formatted Discovery Form.

Dated: July 15, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Sadik Huseny, hereby certify that on this 15th day of July 2025, I caused the foregoing to be electronically filed with the Clerk of the Court of the United States District Court for the Northern District of Illinois, Eastern Division, using the CM/ECF system, which sent notification of such filing to all filing users.

/s/ Sadik Huseny
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